

## **Deposition Designations for:**

**MARK PETERSON**  
**June 9, 2009**

### **Deposition Designation Key**

**CI = Certain insurers (green)**

**CNA = Continental Cas. Co &  
Continental Ins. Co. (red)**

**PP's = Plan Proponents (blue)**

**Obj: = Objection**

**Ctr = Counter Designation**

**R = Relevance**

**BE = Best Evidence**

**F = Foundation**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

\_\_\_\_\_  
In Re: Chapter 11  
Case No.  
01-01139 JKF

W.R. Grace & Co., et al.,

(Jointly  
Debtors. Administered)  
\_\_\_\_\_  
X

- - -  
June 9, 2009

- - -  
DEPOSITION of MARK PETERSON,  
held at the Four Seasons Hotel  
Westlake Village, Two Dole Drive,  
Westlake, California, commencing at  
approximately 7:15 A.M., on the above  
date, before Lisa Lynch, a Registered  
Merit Reporter, New Jersey Certified  
Court Reporter, License No. XI00825,  
and Certified Realtime Reporter

- - -  
MAGNA LEGAL SERVICES, LLP  
7 Penn Center, 8th Floor  
1635 Market Street  
Philadelphia, PA 19103  
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Key  
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& Continental Ins. Co. (red)  
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Page 10

documents as exhibits to the deposition.

I have additional copies of the documents that I handed out here for people in the room, although I don't know if I have a copy for everyone.

MR. COHN: All right, let's get started. Let's mark this Exhibit 1.

(Notice of Deposition of Mark A. Peterson marked for identification as Peterson Exhibit 1.)

(Errata sheet for trust report marked for identification as Peterson Exhibit 2A.)

(Revised trust report marked for identification as Peterson Exhibit 2B.)

(Errata sheet for the estimation report marked for

Page 11

identification as Peterson Exhibit 2C.)

(Full revised estimation report marked for identification as Peterson Exhibit 2D.)

EXAMINATION BY  
MR. COHN:

**Q. Good morning, Dr. Peterson.**

A. Good morning.

**Q. Do you recognize the document that I've placed in front of you marked Exhibit 1?**

A. Yes.

**Q. What is it?**

MR. SPEIGHTS: Hold it a minute.

(Off the record.)

A. It's the Notice of Deposition for this deposition directed to me.

**Q. And do you understand that you're here testifying this**

Page 12

**morning in connection with confirmation of the plan that's been proposed by W.R. Grace and other proponents --**

A. Yes.

**Q. -- in this Chapter 11 case?**

A. Excuse me. Yes.

MR. COHN: Let me -- I need to go off the record again.

(Off the record.)

MR. COHN: Let's mark this Exhibit 2, please.

(Preliminary Expert Report on W.R. Grace trust, Mark A. Peterson, March 2009 marked for identification as Peterson Exhibit 2.)

**Q. Dr. Peterson, I hand you a document that has been marked as Exhibit 2 and ask whether you can identify it.**

A. Yes, I can. But

Page 13

actually -- pause a minute. Yes.

**Q. What is it?**

A. It's a copy of my preliminary expert report on the W.R. Grace trust that I prepared in March 2009. Attached to it is a copy of my June 2007 expert report for projecting liabilities for tort liabilities of W.R. Grace as of April 2001. That was revised and dated January 2009. It has some but not all of the corrections that were passed to you earlier today and both of these have been marginally changed by the errata that we distributed.

**Q. Let's get to the errata in a moment.**

**Can we agree -- do you need another moment with the exhibit?**

A. It has my resume attached too. There may be other exhibits but that's -- I think that's what it is in its entirety.

**Q. Okay. Now, for ease of**

Page 194

1 **report, that the criteria for the**  
 2 **trust is tighter than what Grace**  
 3 **historically paid. Is that a fair**  
 4 **statement?**

5 A. I believe that's true,  
 6 yes.

7 **Q. And that's what I'm**  
 8 **trying to get at. There's a term in**  
 9 **here -- I happen to have it because I**  
 10 **was studying for Mr. Inselbuch's**  
 11 **deposition -- but there's a term in**  
 12 **here about credible exposure. Do you**  
 13 **recall that term?**

14 A. I believe --

15 MR. FINCH: Term in the  
 16 TDP?

17 MR. SPEIGHTS: In the  
 18 TDP.

19 MR. FINCH: Okay.

20 A. I don't recall that  
 21 specific language but it sounds  
 22 reasonable that that's in there.

23 **Q. But I'm looking for that**  
 24 **particular term, but it's something**

Page 195

1 **to that particular effect and, yet, I**  
 2 **don't understand what that means. Is**  
 3 **this something that the trustees will**  
 4 **later have to decide what the**  
 5 **credible -- what a credible exposure**  
 6 **is?**

7 A. Yes.

8 **Q. And when they decide**  
 9 **that, if they operate typically as**  
 10 **other trusts operate with TDPs, will**  
 11 **they set that forth in some document**  
 12 **or some guidelines?**

13 A. Likely so, yes.

14 **Q. So that in Manville in**  
 15 **which you're a trustee, somewhere**  
 16 **there Mr. Austern has some guidelines**  
 17 **he can go to and say is this a**  
 18 **credible exposure justifying**  
 19 **payment?**

20 A. There are instructions  
 21 that are given to the claims  
 22 personnel who process claims.  
 23 There's rules that are incorporated  
 24 in computer programs and those

Page 196

1 provide specifications of those kinds  
 2 of things and other matters.

3 **Q. And that will be**  
 4 **something created by the trustees**  
 5 **after the trust comes into existence;**  
 6 **is that correct?**

7 A. Yes.

8 MR. SPEIGHTS: I'm  
 9 hungry.

10 MR. FINCH: Let's take a  
 11 break. We're going to take a  
 12 lunch break now for 45  
 13 minutes.

14 MR. SPEIGHTS: That's  
 15 good.

16 MR. FINCH: It's 2:19  
 17 Eastern time. I don't know  
 18 what time it is in California,  
 19 but we'll come back a little  
 20 after 3:00 Eastern time.

21 THE WITNESS: Almost  
 22 11:20.

23 (Luncheon recess taken.)

24 **BY MR. SPEIGHTS:**

Page 197

1 **Q. Dr. Peterson, during**  
 2 **your examination by Mr. Cohn you**  
 3 **mentioned that you had some**  
 4 **involvement with the TDP and Grace.**  
 5 **Who did you work with on the TDP?**

6 A. Various lawyers at  
 7 Caplin & Drysdale.

8 **Q. Were you involved in the**  
 9 **TDP for Mogul?**

10 A. Yes.

11 **Q. Suppose a person was**  
 12 **exposed to asbestos as an applicator**  
 13 **of Monokote manufactured by W.R.**  
 14 **Grace and Limpet manufactured by**  
 15 **Turner & Newall, later bought by**  
 16 **Mogul, and those were the only known**  
 17 **exposures.**

18 **Would there be any distinction**  
 19 **in the payments received from either**  
 20 **one of those bankruptcies because --**  
 21 **or bankruptcy trust because Limpet is**  
 22 **a crysolite product and Monokote is a**  
 23 **chrysotile product?**

24 MR. FINCH: Object to

PP's  
Obj:  
Rd  
PP's  
Obj:  
R



Page 214	Page 216
<p>1 <b>have in your mind?</b></p> <p>2 A. Just three or four.</p> <p>3 <b>Q. Who were the</b></p> <p>4 <b>participants?</b></p> <p>5 A. There was general</p> <p>6 counsel of Grace.</p> <p>7 <b>Q. Mr. Shelnitz?</b></p> <p>8 A. Yes. Mr. Bernick. I</p> <p>9 think there was someone there from</p> <p>10 Grace. At one point I think the CEO</p> <p>11 or one of the principals attended a</p> <p>12 meeting. There were other attorneys</p> <p>13 from Kirkland &amp; Ellis. There was</p> <p>14 several attorneys representing the</p> <p>15 SCB -- I mean the ACC. There were</p> <p>16 the attorneys for the FCR. There</p> <p>17 were -- Tom Florence and Amy Brockman</p> <p>18 from ARPC were there as experts for</p> <p>19 the debtor. Jenni Biggs, B-i-g-g-s,</p> <p>20 from Tillinghast and some of her</p> <p>21 partners were there for future</p> <p>22 representative and I was there for</p> <p>23 claimants.</p> <p>24 <b>Q. What attorneys</b></p>	<p>1 road they were going down wasn't</p> <p>2 going right. I don't necessarily</p> <p>3 believe there was a meeting of the</p> <p>4 mind. I don't think there was an</p> <p>5 actual settlement at that meeting.</p> <p>6 It's when Mr. Inselbuch started</p> <p>7 explaining the quantitative analyses</p> <p>8 that everyone threw up their hands.</p> <p>9 MR. SPEIGHTS: Thank</p> <p>10 you, Dr. Peterson.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 MR. FINCH: Does anybody</p> <p>13 else in the room have any</p> <p>14 questions for Dr. Peterson?</p> <p>15 Okay.</p> <p>16 Does anyone on the</p> <p>17 telephone have questions for</p> <p>18 Dr. Peterson? If you could</p> <p>19 announce who you are and who</p> <p>20 you represent before you start</p> <p>21 questioning and that will help</p> <p>22 the court reporter.</p> <p>23 MR. BROWN: Nathan, this</p> <p>24 is Mike Brown. I represent</p>
Page 215	Page 217
<p>1 <b>representing the ACC were there?</b></p> <p>2 A. Inselbuch was there. I</p> <p>3 don't remember whether or not Finch</p> <p>4 was there. I don't remember who else</p> <p>5 was there.</p> <p>6 <b>Q. Were any of the asbestos</b></p> <p>7 <b>PI lawyers there?</b></p> <p>8 A. I think at some of the</p> <p>9 meetings some were. I don't recall</p> <p>10 who. Probably Rice but I can't say</p> <p>11 for sure.</p> <p>12 <b>Q. Was anybody representing</b></p> <p>13 <b>equity at any of those meetings?</b></p> <p>14 A. Yes, I believe there was</p> <p>15 a representative of equity but I'm</p> <p>16 not certain of whom. Mr. Inselbuch</p> <p>17 would have much better knowledge of</p> <p>18 the participants, and there were</p> <p>19 certain meetings that I wasn't at.</p> <p>20 <b>Q. Were you at the meeting</b></p> <p>21 <b>when the participants had a meeting</b></p> <p>22 <b>of the mind?</b></p> <p>23 A. I think I was at a</p> <p>24 meeting when they figured out the</p>	<p>1 Geico, Republic, Seaton and</p> <p>2 OneBeacon. I have a few</p> <p>3 questions for Dr. Peterson.</p> <p>4 MR. FINCH: Okay, fire</p> <p>5 away.</p> <p>6 MR. BROWN: Actually,</p> <p>7 could you do me a favor? Could</p> <p>8 you move, I guess, the</p> <p>9 microphone a little closer to</p> <p>10 Dr. Peterson? He was a little</p> <p>11 bit harder to hear than the</p> <p>12 questioners.</p> <p>13 THE WITNESS: I'm just</p> <p>14 soft spoken.</p> <p>15 MR. FINCH: Okay. We've</p> <p>16 switched chairs and Dr.</p> <p>17 Peterson is as close to the mic</p> <p>18 as we can get him so go ahead.</p> <p>19</p> <p>20 <b>EXAMINATION BY</b></p> <p>21 <b>MR. BROWN:</b></p> <p>22 <b>Q. Good afternoon, Dr.</b></p> <p>23 <b>Peterson. I guess it's afternoon in</b></p> <p>24 <b>California by now.</b></p>

PP's  
Obj'r

Page 226

1 **opinion in this bankruptcy case with**  
 2 **respect to Grace's overall liability**  
 3 **for asbestos personal injury claims**  
 4 **for purposes of insurance coverage**  
 5 **litigation?**

6 MR. FINCH: Object.  
 7 Form, lack of foundation.

8 MR. DEMMY: Same  
 9 objection.

10 A. Not so far.

11 **Q. Fair enough.**

12 **And am I correct that so far**  
 13 **you have not provided such an**  
 14 **opinion?**

15 MR. FINCH: Objection,  
 16 form.

17 A. Not to my  
 18 understanding -- but I don't know,  
 19 again, uses. I've not explicitly  
 20 done such -- made such an opinion.

21 MR. BROWN: I'm sorry.  
 22 Can the court reporter read  
 23 back that last comment by Dr.  
 24 Peterson?

Page 227

1 (The reporter reads the  
 2 requested portion.)

3 MR. BROWN: Okay, all  
 4 right.

5 **Q. Dr. Peterson, am I**  
 6 **correct that the ACC has not retained**  
 7 **you to provide an opinion regarding**  
 8 **the asbestos PI trust's liability for**  
 9 **indemnified insurer TDP claims?**

10 A. That's a safe  
 11 assumption, yes. Not -- again, not  
 12 until -- not so far.

13 **Q. Okay. And would your**  
 14 **answer be the same with respect to**  
 15 **insurance-related TDP claims?**

16 MR. FINCH: Object to  
 17 form.

18 A. I don't even know what  
 19 that is so I've not been asked to  
 20 do -- to provide any opinions about  
 21 that so far.

22 **Q. Okay. Have you been**  
 23 **asked to provide any opinions**  
 24 **regarding the asbestos PI trust's**

Page 228

1 **liability for indirect PI trust**  
 2 **claims?**

3 A. Not as a separate  
 4 matter, no.

5 **Q. I think you said**  
 6 **earlier, but correct me if I'm wrong,**  
 7 **that the Grace trust will be**  
 8 **insolvent. Do I have that correct?**

9 MR. FINCH: Object to  
 10 form.

11 A. I don't think I said  
 12 that explicitly. I think I said it  
 13 would be impaired.

14 **Q. Okay. Well, let me ask**  
 15 **it then. Do you have an opinion on**  
 16 **whether the Grace trust, asbestos PI**  
 17 **trust, is insolvent?**

18 MR. FINCH: Object to  
 19 form, lack of foundation.

20 A. Its liabilities will be  
 21 far in excess of its assets.

22 **Q. Okay. I know someone**  
 23 **asked you a question very similar to**  
 24 **this; I'm not sure I heard the**

Page 229

1 **answer.**

2 **What role did you play in**  
 3 **developing the TDP disease values in**  
 4 **this case?**

5 MR. FINCH: Objection,  
 6 asked and answered. You can  
 7 answer it again.

8 A. I did analyses of what  
 9 the historic settlements were and  
 10 what I believe the current values of  
 11 the various kinds of disease claims  
 12 were against the trust. I made  
 13 alternative recommendations of  
 14 possible TDP values derived from  
 15 those analyses and probably discussed  
 16 that with members of the committee as  
 17 well as committee professionals.

18 **Q. Is that pretty typical**  
 19 **of the role that you played in**  
 20 **connection with your retention in**  
 21 **other asbestos bankruptcy cases?**

22 A. It's typical of one role  
 23 I play, yes.

24 **Q. Okay. I'm not sure what**

PP's  
Obj:  
RPP's  
Obj:  
RPP's  
Obj:  
R



the exhibit number is because I was a little bit confused even after Mr. Speights went through it. You have an Exhibit 2 in front of you; is that correct?

A. Just a moment. Yes.

Q. Is that -- I just want -- is that the big, thick packet? I mean, it's about three-quarters of an inch or so thick?

A. Yes. It's the thickest of the exhibits.

Q. Okay. Is there a CV in there?

A. Yes.

Q. Can you turn to the CV?

A. Yes, it's Exhibit 1 which follows the -- what we've called the trust report and precedes the estimation report and I have that.

Q. Okay. Can you turn

What's the relevance of this to the Grace bankruptcy confirmation hearings, Mr. Brown?

MR. BROWN: Well, it's part of the CV. That would be maybe part of it.

A. I am providing consultation and expert judgments and liabilities estimates and helping calculating payment percentages for Mr. Brownson, the trustee, as well as consulting with the FCR and the one-person TAC so I talk with all three parties. Formally my retention is by the trust.

Q. Who is the TAC -- who is the one-person TAC?

A. Well, it's Mike Polk of Sieben Polk.

Q. Okay.

A. It may be Sieben Polk as a whole, but Mike Polk tends to be the one that's involved with it.

to -- well, let's see. Starting at the bottom of page three but carrying over to page four, the last bullet point on page three is "Expert to 20 Asbestos trusts Regarding Claims, Procedures and Liability Estimation".

A. I see that.

Q. And on page four the last one looked to there is the API trust?

A. Yes.

Q. And you were an expert for the representative of future claimants, otherwise known as the FCR is what we typically call them?

A. Yes.

Q. And that gentleman's name was Thomas Carey; is that correct?

A. Still is.

Q. Still is, okay. What role are you playing for the API trust for the moment?

MR. FINCH: Objection.

Q. Okay. I think Ed Longosz has a document that I'd like you to take a look at if, you would, and it's the -- it's the one marked 13.

MR. BROWN: Could you hand him a copy of that? Ed, did you have a chance to make copies for everyone?

MR. LONGOSZ: I did. This is a new role for me. I'm discharging my duties and obligations.

THE WITNESS: Very well.

MR. LONGOSZ: Thank you.

Q. Dr. Peterson, you can take a moment to review -- well, let me actually make a couple of comments about it first.

The document that you have should be a two-page document. It has a deposition exhibit number on it which says 13 Polk in the lower



PP's Obj: R

60 (Pages 234 to 237)

PP's  
Obj:  
R

<div>CI</div> <div>Page 234</div>	<div>CI</div> <div>Page 236</div>
<p>1 right-hand corner. It has two 2 numbers below that as well, ACC 2352, 3 and then below that A204. 4 I will represent to you that 5 the exhibit label is an exhibit label 6 from the deposition of Mr. Polk in 7 the API case, the ACC number is the 8 Bates number from the ACC in that 9 case and the A204 is the number from 10 the appendix that accompanied the a 11 cert appeal in that case. 12 But other than those markings, 13 which there's some similar markings 14 on the second page, could you 15 identify for me the document I guess 16 we're going to mark as Exhibit 6? 17 MR. BROWN: Is that what 18 we're up to? 19 MR. LONGOSZ: You want 20 this marked 6? 21 MR. BROWN: I want it 22 marked as Peterson-6. 23 (E-mail Bates stamped 24 ACC 2352 through 2353 marked</p>	<p>1 Q. Okay. And when you say 2 "these individuals", if you can see 3 on the top of the first page, it was 4 indicated as having been sent from 5 you to a Steven Meyer with copies to 6 a Michael Meyer, Mike Polk, Mike 7 Sieben, Thomas Carey and another copy 8 to you, correct? 9 A. Yes. 10 Q. All right. And you have 11 no reason to doubt that you sent this 12 e-mail? 13 A. Well, I just -- I 14 don't -- I don't recall this document 15 at all. The subject matter is 16 familiar to me. I don't recall the 17 particular language of this but it 18 very well might have come from me. 19 Q. Mr. Longosz is going to 20 hand you another document. 21 MR. LONGOSZ: 7? 22 MR. BROWN: We'll mark 23 this one Peterson-7. 24 (E-mail chain Bates</p>
<div>CI</div> <div>Page 235</div>	<div>CI</div> <div>Page 237</div>
<p>1 for identification as Peterson 2 Exhibit 6.) 3 A. Is there a particular 4 part of this document you want me to 5 look at? 6 Q. You can read the whole 7 thing. The only question I have for 8 you is: Would you identify it for 9 me? 10 A. Let me look at it. 11 (The witness reviews the 12 document.) 13 A. All right, I've read 14 this. Your question is? 15 MR. FINCH: What was the 16 question? 17 Q. Can you identify it for 18 me? 19 A. I don't recall this 20 document, but it purports to come 21 from me in a time frame when I was 22 working with these individuals and I 23 have no reason to think it isn't 24 something I authored.</p>	<p>1 stamped ACC 2483 through 2485 2 marked for identification as 3 Exhibit 7.) 4 Q. Just so we're looking at 5 the same thing, Dr. Peterson, the 6 document you have should be a 7 three-page document with an exhibit 8 tab on the front that says 14 Polk. 9 Do you see that? 10 A. Yes, I see that. 11 Q. Okay. I actually don't 12 need you to read this entire document 13 if it will save some time. I can 14 direct your attention to page two at 15 the bottom which purports to be an 16 e-mail sent from you to Thomas Carey 17 and Steven Meyer, if you could read 18 that e-mail for me, and then I've got 19 a question or two. 20 (The witness reviews the 21 document.) 22 MR. DEMMY: Michael, 23 this is Jonathan. Could I have 24 someone from your team PDF to</p>

PP's  
Obj:  
R



1 me those e-mails because we  
2 Obviously don't have them here?  
3 I mean, I don't need them this  
4 second.

5 MR. BROWN: Yes, we'll  
6 PDF them to you.

7 MR. DEMMY: Thanks.

8 A. All right, I've read  
9 this.

10 Q. Okay. Can you identify  
11 that e-mail that begins at the bottom  
12 of page two of what we've marked as  
13 Peterson-7?

14 A. Well, again, it purports  
15 to come from me and it has my e-mail  
16 address and it's a subject matter  
17 that I would have -- would have been  
18 likely to discuss with these persons  
19 but I don't recall it.

20 Q. You don't recall it?

21 A. No.

22 Q. Do you have any reason  
23 to doubt that you sent this e-mail?

24 A. Not particularly.

PP's  
Obj: R

1 Q. If you look above there,  
2 you'll -- right above what I directed  
3 you to on page two there's a -- well,  
4 let me back up.

5 You would agree with me,  
6 wouldn't you, that what we've marked  
7 as Exhibit 7 is an e-mail chain?

8 A. Yes.

9 Q. Okay. And it begins  
10 with your e-mail that I just referred  
11 you to, correct?

12 A. Yes.

13 Q. And that's the one dated  
14 Friday, August 27, 2004 at 4:43 PM?

15 A. Actually, the --  
16 apparently the Mike Polk e-mail  
17 doesn't have a date but it appears to  
18 follow those. I'm sorry. What was  
19 your observation -- you asked --  
20 you're talking about the time and  
21 date of the --

22 Q. Yes. The first e-mail,  
23 the one which I directed you to, is  
24 dated Friday, August 27th, 2004 at

PP's  
Obj: R

1 4:43 PM, correct?

2 A. It's the last in the --  
3 on the document, but yes.

4 Q. Okay. And you  
5 understand the one right above that  
6 from Mr. Meyer -- that's Mr. Steven  
7 Meyer -- to be a response to your  
8 e-mail dated August 31st, 2004 at  
9 9:26 AM?

10 A. It appears to be.  
11 That's what it says it is.

12 Q. Okay. And the e-mail  
13 that begins on the first page you  
14 noted earlier doesn't seem to have a  
15 date on it but that appears to be a  
16 comment from Mr. Polk, correct?

17 A. Apparently.

18 Q. And it was directed to  
19 you, among others?

20 A. Yes.

21 Q. And do you recognize  
22 that to be your e-mail address, at  
23 least your e-mail address back in  
24 2004?

PP's  
Obj: R

1 A. It was and is.

2 Q. Okay. all right, you  
3 can put that aside, Dr. Peterson.

4 I just -- I noted earlier from  
5 your earlier testimony, and I want to  
6 make sure I have this correct, that  
7 you have had various involvement, as  
8 I understand it, or engagements in  
9 connection with the asbestos  
10 liabilities of W.R. Grace. And let  
11 me try to summarize them and then you  
12 just tell me whether I have it right.

13 I understood you to testify  
14 earlier that you played some role  
15 back in 1998 and that thereafter you  
16 were involved in the fraudulent  
17 transfer litigation involving Sealed  
18 Air and Fresenius in or around 2002,  
19 that thereafter you were also  
20 involved in the estimation trial and  
21 that you are obviously involved now  
22 in connection with the plan  
23 confirmation proceeding. Is that  
24 correct.

PP's  
Obj: R